

§ 31.3221–5 Recapture of credits under the Families First Coronavirus Response Act and the Coronavirus Aid, Relief, and Economic Security Act.

* * * * *

(e) *Recapture of interest on erroneously refunded credits under the Families First Act and CARES Act.* For purposes of this section, any overpayment interest paid under section 6611 to an employer, or any third party payor as described in paragraph (d) of this section, with respect to an erroneous refund amount described in paragraph (a) or (b) of this section shall also be treated as an underpayment of the taxes imposed under section 3221(a) and may be assessed and collected by the Secretary in the same manner as the taxes.

(f) *Applicability date.* This section applies to all credit refunds under sections 7001 and 7003 of the Families First Act, as modified by section 3606 of the CARES Act, advanced or paid on or after July 24, 2020, and all credit refunds under section 2301 of the CARES Act advanced or paid on or after July 24, 2020, except paragraph (e) of this section applies to all interest amounts paid under section 6611 on or after July 2, 2024 for any erroneous refund described in paragraph (a) or (b) of this section.

Douglas W. O'Donnell,
Deputy Commissioner.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG–120137–19]

RIN 1545–BP66

Update of Regulations Regarding Payment of Tax by Commercially Acceptable Means

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed amendments to regulations regarding the payment of tax by commercially acceptable means. The proposed amendments would reflect changes to the law made by the Taxpayer First Act that would allow the IRS to directly accept payments of tax by credit or debit card, without having to connect taxpayers to third-party payment processors.

DATES: Electronic or written comments and requests for a public hearing must be received by September 3, 2024.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at <https://www.regulations.gov> (indicate IRS and REG–120137–19) by following the online instructions for submitting comments. Requests for a public hearing must be submitted as prescribed in the “Comments and Requests for a Public Hearing” section. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (Treasury Department) and the IRS will publish for any comments submitted electronically or on paper to the public docket. Send paper submissions to: CC:PA:01:PR (REG–120137–19), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Crystal Jackson-Kaloz of the Office of the Associate Chief Counsel (Procedure and Administration), (202) 317–5191 (not a toll-free number); concerning the submission of comments and requests for a public hearing, Publications and Regulations Section at (202) 317–6901 (not a toll-free number), or by sending an email at publichearings@irs.gov (preferred).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Procedure and Administration Regulations (26 CFR part 301) under section 6311 of the Internal Revenue Code (Code). These proposed regulations would amend provisions of § 301.6311–2 of the existing regulations (existing § 301.6311–2) to implement the changes made to section 6311 of the Code by section 2303 of the Taxpayer First Act (TFA), Public Law 116–25, 133 Stat. 981, 1013 (2019).

Section 6311(a) provides that it is lawful for the Secretary of the Treasury or her delegate (Secretary) to receive payment for Internal Revenue taxes by any commercially acceptable means that the Secretary deems appropriate to the extent and under the conditions provided in regulations prescribed by the Secretary. Existing § 301.6311–2, which was adopted by the publication of TD 8969 in the **Federal Register** (66 FR 64740–01) on December 14, 2001, authorizes payment of Internal Revenue taxes by credit or debit card so long as

such payments are made in the manner and in accordance with the forms, instructions, and procedures prescribed by the Commissioner of Internal Revenue (Commissioner).

Prior to passage of the TFA, section 6311(d)(2) authorized the Secretary to enter into contracts to obtain services related to receiving payment of taxes by credit card or debit card, or charge card, but prohibited the Secretary from paying any fee or other consideration under any such contract. Existing § 301.6311–2(f) implements this rule. Existing § 301.6311–2(e) prohibits the IRS from imposing any fee or charge on persons making payment of taxes by credit card or debit card. Currently, the IRS utilizes third-party processors to process payment of taxes by credit cards, which includes charge cards, and debit cards for which taxpayers pay a processing fee directly to the third-party processor. Third-party processors charge a variable percentage fee for payment by credit card and a flat fee for payment by debit card.

Section 2303 of the TFA amended section 6311(d)(2) by adding a discretionary exception whereby the Secretary is no longer prohibited from paying a fee under a contract related to receiving payment of taxes by credit or debit card to the extent that the Secretary ensures that any such fee is fully recouped from the persons paying taxes by credit or debit card pursuant to such contract. This provision enables the IRS to receive similar benefits as other entities that accept credit or debit cards, including guaranteed receipt of funds and reduction of paper check processing costs. This provision also enables taxpayers to make a payment more easily by credit or debit card directly to the IRS, such as over the telephone, without having to separately wait for the IRS to connect them to third-party processors. *See* H.R. Rep. 116–39(I), 116th Cong., 1st Sess. at 90 (2019).¹ Section 2303 of the TFA now gives the IRS flexibility to enter into a

¹ In 2019, different versions of the TFA were introduced in the House and Senate and both bills contained provisions to amend section 6311 of the Code. H.R. 1957 was introduced in the House on March 28, 2019, and passed the House on April 9, 2019, but did not pass the Senate. Section 2303 of H.R. 1957 contained proposed statutory language amending section 6311(d) that was identical to the statutory language that was enacted a short time later on July 1, 2019, in section 2303 of H.R. 3151. Due to the procedural way in which H.R. 3151 became a vehicle for enacting the TFA, there are no separate House, Senate, or Conference Reports regarding H.R. 3151, which became the TFA, Public Law 116–25. Therefore, it is appropriate for the Treasury Department and the IRS to look to the House Ways and Means Committee Report for H.R. 1957, the immediate predecessor to H.R. 3151, to understand the intended scope of section 2303 of the TFA.

contract that would allow taxpayers to pay taxes by credit or debit card directly to the IRS.

Explanation of Provisions

The proposed regulations would amend existing § 301.6311–2 to conform to the TFA’s amendment to section 6311(d)(2). The proposed regulations would remove both the prohibition in existing § 301.6311–2(f) on the payment of any fee by the IRS under any contracts related to payment of taxes by credit, debit, or charge card, and the prohibition in existing § 301.6311–2(e) on the IRS imposing any fee or charge on persons making payment of taxes by credit or debit card. Under existing § 301.6311–2(e), when a taxpayer pays any Internal Revenue tax by credit or debit card under contracts with third-party processors, the IRS does not charge the taxpayer a fee, and the IRS does not receive any portion of the fee charged by the third-party processor. Because the exception added to section 6311(d)(2) by the TFA is discretionary, proposed § 301.6311–2(e)(1) would continue to authorize the IRS to enter into those contracts with third-party processors in which it does not pay a fee for services relating to receiving payments of tax by credit or debit card.

Proposed § 301.6311–2(e)(2) would also authorize the IRS to enter into contracts in which it pays a fee to a third party to process a payment made by a taxpayer. Under section 6311(d)(2), the IRS must seek to minimize any fee the IRS is required to pay under such a contract. If the IRS pays a fee under such a contract, under proposed § 301.6311–2(e)(2), the IRS would fully recoup the amount of the fee paid to the third-party from the persons paying taxes by credit or debit card pursuant to the contract as a reimbursement fee.

Proposed § 301.6311–2(e)(2) would require that the reimbursement fee be paid by the taxpayer at the time of the credit or debit card tax payment. Section 6402 of the Code allows the Secretary to credit or refund any overpayment “in respect of an internal revenue tax.” Because the reimbursement fee paid by the taxpayer is not a tax, the Code’s credit and refund procedures would not apply. Insofar as a taxpayer is to receive a refund of taxes paid by credit or debit card under section 6402, the taxpayer cannot receive a refund of the reimbursement fee paid to the IRS at the time of the tax payment. If the IRS pays a fee to a third-party under a contract providing for the payment of taxes by credit or debit cards, section 6311(d)(2), as amended by the TFA, requires that the fee be fully recouped by the Secretary. The proper

regime for adjusting credit or debit card payment errors, including reimbursement fee errors, is found in section 6311(d)(3) and existing § 301.6311–2(d)(1). The TFA does not change those procedures, although the proposed regulations amend existing § 301.6311–2(d)(1) to include payments of reimbursement fees under proposed § 301.6311–2(e)(2).

Finally, proposed § 301.6311–2(e) would authorize the IRS to enter into contracts with third parties, regardless of whether the IRS pays a fee, but only if the contract provides a cost benefit to the government. The cost benefit to the government is derived from a reduction of check processing costs. In addition, expanding taxpayers’ payment options generally encourages tax compliance, so it is beneficial for both the government and taxpayers.

Proposed Applicability Date

The regulations are proposed to apply to payments of taxes and reimbursement fees made on or after the date the regulations are published as final regulations in the **Federal Register**.

Special Analyses

I. Regulatory Planning and Review

Pursuant to the Memorandum of Agreement, Review of Treasury Regulations under Executive Order 12866 (June 9, 2023), tax regulatory actions issued by the IRS are not subject to the requirements of section 6 of Executive Order 12866, as amended. Therefore, a regulatory impact assessment is not required.

II. Regulatory Flexibility Act

It is hereby certified that this proposed regulation will not have a significant economic impact on a substantial number of small entities pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6). This certification is based on the fact that the regulation would apply only to the IRS’s ability to (1) pay a fee under a contract related to receiving payment of taxes by credit or debit card, and (2) recoup processing fees from the person paying taxes by credit or debit card. Under current regulations, the IRS may not do either of those things. The regulation would also implement a requirement under the TFA that the IRS must seek to minimize any fee the IRS is required to pay under such a contract. Because persons choosing to pay taxes by credit or debit card are ordinarily required to pay processing fees to a third-party processor, the proposed regulation, if finalized, would not have a significant economic impact on such persons.

Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for the Office of Advocacy of the Small Business Administration for comment on its impact on small business.

III. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a State, local, or Tribal government, in the aggregate, or by the private sector, of \$100 million in 1995 dollars, updated annually for inflation. This rule does not include any Federal mandate that may result in expenditures by State, local, or Tribal governments, or by the private sector in excess of that threshold.

IV. Executive Order 13132: Federalism

Executive Order 13132 (Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on State and local governments, and is not required by statute, or preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. These proposed regulations do not have federalism implications and do not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive order.

Comments and Requests for Public Hearing

Before these proposed amendments to the final regulations are adopted as final regulations, consideration will be given to comments that are submitted timely to the Treasury Department and the IRS as prescribed in this preamble under the **ADDRESSES** heading. The Treasury Department and the IRS request comments on all aspects of the proposed regulations. Any electronic and paper comments submitted will be made available at <https://www.regulations.gov> or upon request.

A public hearing will be scheduled if requested in writing by any person who timely submits electronic or written comments. Requests for a public hearing are also encouraged to be made electronically. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Announcement 2023–16, 2023–20 I.R.B. 854 (May 15, 2023), provides that public hearings will be conducted in person, although the IRS will continue to provide a telephonic option for individuals who wish to attend or testify at a hearing by telephone. Any telephonic hearing will be made accessible to people with disabilities.

Drafting Information

The principal author of these regulations is Crystal Jackson-Kaloz of the Office of the Associate Chief Counsel (Procedure and Administration). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, the Treasury Department and IRS propose to amend 26 CFR part 301 as follows:

PART 301—PROCEDURE AND ADMINISTRATION

■ **Paragraph 1.** The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 301.6311–2 is amended by:

- 1. Revising paragraph (d)(1).
- 2. Removing paragraph (e).
- 3. Redesignating paragraphs (f), (g), and (h) as paragraphs (e), (f), and (g).
- 4. Revising newly redesignated paragraph (e).
- 5. In new paragraph (f), removing the text “Internal Revenue Service” and adding the text “IRS” in its place.
- 6. Revising newly redesignated paragraph (g).

The revisions read as follows:

§ 301.6311–2 Payment by credit card and debit card.

(d) * * * (1) *In general.* Payments of taxes by credit card or debit card, and payments of reimbursement fees referred to in paragraph (e)(2) of this section, are subject to the applicable error resolution procedures of section 161 of the Truth in Lending Act (15 U.S.C. 1666), section 908 of the Electronic Fund Transfer Act (15 U.S.C. 1693f), or any similar provisions of State or local law, for the purpose of resolving errors relating to the credit card or debit

card account, but not for the purpose of resolving any errors, disputes or adjustments relating to the underlying tax liability.

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(e) *Authority to enter into contracts.*

(1) *In general.* The Commissioner may enter into contracts related to receiving payments of tax by credit card or debit card if such contracts are cost beneficial to the government. The determination of whether the contract is cost beneficial will be based on an analysis appropriate for the contract at issue and at a level of detail appropriate to the size of the government’s investment or interest.

(2) *Contracts under which fees are prohibited.* The Commissioner may enter into contracts that provide that the Internal Revenue Service (IRS) will not pay a fee, charge, or other monetary consideration under such contracts related to payments of tax by credit card or debit card. For payments of tax under such contracts, this section does not prohibit the imposition of fees or charges by issuers of credit cards or debit cards or by any other financial institutions or persons participating in the credit card or debit card transaction. The IRS may not receive any part of any such fees that may be charged.

(3) *Contracts under which fees are permitted and must be recouped.* The Commissioner may enter into contracts that provide that the IRS will pay a fee, charge, or other monetary consideration under such contracts related to payments of tax by credit card or debit card. If the IRS pays a fee under such contracts, it must recoup the full amount paid under such contracts as a reimbursement fee from the persons paying tax by credit card or debit card. The reimbursement fees will be limited to the amount of the fees that IRS pays under any such contract and will be paid at the time of, and in addition to, the tax payment. The reimbursement fee is not a tax imposed by the Code, and no portion of the reimbursement fee is eligible for refund or credit under section 6402 of the Code. The error resolution procedures described in paragraph (d)(1) of this section will apply to any errors concerning the reimbursement fee. In negotiating contracts under paragraph (e)(3) of this section, the Commissioner will seek to minimize the amount of the fees paid.

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(g) *Applicability date.* The rules of this section apply to payments of taxes and reimbursement fees made on or

after [date of publication of final regulations in the **Federal Register**].

Douglas W. O’Donnell,
Deputy Commissioner.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2024–0197; FRL–11981–01–R9]

Air Plan Revisions; California; Sacramento Metropolitan Air Quality Management District; Reasonably Available Control Technology District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve state implementation plan (SIP) revisions from the Sacramento Metropolitan Air Quality Management District (SMAQMD or “District”) to address Clean Air Act (CAA or “Act”) requirements related to the 2008 8-hour ozone national ambient air quality standards (NAAQS or “standards”). These revisions concern emissions of oxides of nitrogen (NOX) from boilers, gas turbines, and miscellaneous (misc) combustion units and reasonably available control technology (RACT) requirements for major sources of NOX in the portion of the Sacramento Metro, CA, nonattainment area that is subject to SMAQMD jurisdiction. We are taking comments on this proposal and plan to follow with a final action.

DATES: Comments must be received on or before August 1, 2024.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2024–0197 at <https://www.regulations.gov>. For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not